



February 28, 2008

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Tentative Order for the Municipal Regional Storm Water NPDES Permit

Dear Mr. Wolfe:

The Town of Colma appreciates the opportunity to review and comment on the draft NPDES Municipal Regional Permit (MRP).

The Town has had proactive municipal storm water pollution prevention and control program since the countywide municipal storm water permit was adopted in 1993, and we share the Board Staff's intent that the new permit should facilitate continued improvements to water quality in the San Francisco Bay and its tributaries.

However, most of the draft MRP is overly prescriptive about the particular manner in which compliance may be achieved. The level of detail and the inflexible requirements create a barrier for achieving permit compliance and improving water quality.

Unfortunately, based on our review of the draft document, we do not believe that the new permit will lend itself to improved water quality and may, in fact, detract from local agencies' ability to carry out either existing or improved programs. The permit requires an extraordinary amount of record keeping and reporting, which will reduce the time available for agencies to develop new programs, perform inspections, or other measures that will have an actual impact on water quality.

The Town does not support areas of enhanced storm water regulation in the Tentative Order unless there are substantial changes, as described in the following comments.

Need to Streamline and Add Flexibility to Permit to Solve Water Quality Problems

It is essential that new initiatives in the permit be practical, understandable, and allows municipalities flexibility to solve water quality problems. There are a number of critical areas in the permit where modifications are needed to achieve these objectives. The following issues raised by the Tentative Order are of greatest concern to our municipality, and we have provided a detailed discussion of each along with recommended solutions.

1. Allow a More Flexible Approach to Trash and Litter Reduction

What the Draft Permit Proposes. The draft permit's Provision C.10 proposes that each Permittee identify high trash and litter catchments totaling at least 10 percent of the urbanized area within its jurisdiction and implement actions to reduce the impact of trash on beneficial uses. The permit would require two types of control actions: one, the installation of "full trash capture devices" on at least 5 percent of the catchment area and, two, the use of "enhanced trash management control measures." The permit would also require that the "enhanced trash management control measures" be implemented as interim controls in the areas where "full capture devices" would eventually be installed.

It is unclear what the technical basis is for the very prescriptive requirements listed in this section of the proposed permit in regards to the frequency of street sweeping, catch basin cleaning, and Installation of full capture treatment devices.

On March 14, 2007 the Water Board heard a status report on the Municipal Regional Storm water Permit that solicited many comments on the need to improve trash and litter control. Some of the commenters pointed out the variety of societal problems, such as homeless encampments, that in some locations contribute significantly to garbage and hazardous material being dumped along creeks. The Board members suggested that it would be worthwhile to form a multi-agency team to help improve the control of trash and litter. Subsequently, some legislators have also identified a need for a "more comprehensive public policy and regulation to protect the Bay from trash and marine debris."¹ Has a multi-agency team been created to develop a more comprehensive public policy to deal with trash and litter? If so, what solutions is it recommending and how are these solutions related to what is being proposed in the draft permit?

Recommended Solution:

The permit should be modified to allow flexibility in addressing trash and litter controls problems so that cost-effective solutions may be implemented that are tailored to solving particular problems. It is recommended that the permit be rewritten to require that each municipality select one high trash impact catchment tributary to the municipal separate storm sewer system that it owns or operates, implement an appropriate solution or require the responsible parties to implement a solution, and then demonstrate measurable reductions in trash and litter. On this basis it is recommended that the permit be revised to eliminate the proposed permit's requirements for at least 10 percent of the high trash and litter urban land area within a municipality's jurisdiction to have trash controls along with the proposed requirement that half or more of this 10 percent catchment area be controlled with full trash capture devices.

In addition, since a high priority of the City/County Association of Governments of San Mateo County is to implement sustainable green streets and parking lot projects using the vehicle registration fees collected under AB 1546 (Simitian – 2004), the permit should

¹ Letter dated October 29, 2007 from 13 local legislators to John Muller.

also state that any municipality that is implementing this type of project would be meeting the permit's trash and litter requirements during this permit period through the design, construction, and maintenance of its sustainable green street or parking lot project. We believe these multi-objective projects will have a beneficial impact on trash and litter. In addition, trash and litter controls that can be accomplished as part of multi-objective projects are more sustainable and financially viable than single-purpose approaches.

2. Modify Proposed Changes to New and Redevelopment Requirements

What the Draft Permit Proposes. The draft permit contains a section (Provision C.3.b) that describes "Regulated Projects" that must meet permit-specified source control, site design, and storm water treatment requirements. The draft permit proposes the size threshold for Regulated Projects be reduced from 10,000 to 5,000 square feet of impervious surface starting July 1, 2010 for "Special Land Use Categories" including: auto service facilities; retail gasoline outlets; restaurants; and "parking lots that are stand-alone or part of any other development project" (Provision C.3.b.i.1). In addition, the draft permit also describes specific site design and source control requirements (Provision C.3.a.i.(6 and 7)) for all projects that are "not regulated by Provision C.3."

These requirements pose an unnecessary burden on municipalities for the following reasons:

- Municipalities have only recently adopted ordinances and policies and begun regulating projects down to the 10,000 square foot threshold and there is no justification to change the threshold within such a short time frame. Since very few projects this size have completed construction and have Best Management Practices (BMPs) in place, there is still a lack of knowledge about the effectiveness of these BMPs, maintenance issues, and how to deal with constraints on small sites.
- Many more project applications would have to be reviewed if the threshold is lowered. No nexus has been established between a lower square footage threshold for Regulated Projects and significant water quality improvement in an already highly urbanized environment so as to justify such the increased staffing and resource burden. If the size threshold is lowered below what the current permit requires, there would be very little increase in the amount of impervious surface that requires storm water treatment. Based on studies that the Water Board staff conducted and reported on at its November 15, 2006 workshop, the current permit requirements are capturing about 97% of all of the impervious surface area created and/or replaced in the cities studied.
- Given that these "Special Land Use Categories" have to meet site design and source control requirements regardless of the size of the project, it is unclear that there is any technical basis for also requiring storm water treatment control for projects that fall under these categories. The fact sheet states that these land uses have the potential to contribute more polluted runoff and the 5,000 square foot threshold is considered maximum extent practicable because it is included in the Los Angeles Regional Board Storm water Permit for these land uses. However, the L.A. permit

does not have these additional site design and source control requirements for small sites, and does not demonstrate a nexus between the size threshold and significant water quality improvement.

- Provision C.3.b.i.1. seems to require that all parking lots greater than 5,000 square feet, whether they are surface lots or covered, provide storm water treatment. If a 5,000 square foot parking lot is designed so that it is not exposed to storm water (i.e., under a building or a lower level parking structure), there is no reason to have storm water treatment.

The proposed permit also seeks to further evaluate storm water treatment at smaller and smaller projects by requiring studies to collect impervious surface data from small projects in the range of 1,000 to 10,000 square feet (Provision C.3.j). These small projects would include single-family homes. Significant effort by municipal staff will be required to collect these data from projects that are not already being reviewed at the planning counter and to verify the accuracy of the data, as previous data collection efforts have shown. It is not worthwhile investing municipal staff resources in collecting this type of data because: 1) the regulation of these small projects can be handled appropriately under the proposed permit's site design and source control requirements; and 2) it appears that decisions about regulatory thresholds are being made arbitrarily in lieu of proper analysis of impervious surface data and water quality impacts.

In addition, the draft permit proposes to make the storm water requirements for rehabilitating and reconstructing roads more stringent than required by the current permit. The proposed permit (Provision C.3.b.i.(1)(b)) would only allow "pavement resurfacing within the existing footprint" to be excluded from the storm water treatment requirements imposed on "Regulated Projects" (which include arterial streets and roads). The current permit allows the following types of road maintenance and repair projects to be excluded from storm water treatment: "...pavement resurfacing, repaving and road pavement structural section rehabilitation, within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed" (Provision C.3.c.i.3). Since there is no description of the basis for this proposed change in the Fact Sheet, the Water Board staff may have considered this proposed change in wording as inconsequential, but it is not.

Recommended Solution:

It is recommended that the permit keep the size threshold for all "Regulated Projects" at 10,000 square feet because the storm water pollutants from smaller "Special Land Use Categories" types of projects can be adequately handled using good site design and source controls by applying low impact development principles. In addition, it is recommended that the proposed requirements to collect additional impervious surface information for projects smaller than 10,000 square feet be deleted from the permit. The collection of this information is unnecessary because it was collected previously and there is no significant reason to collect additional information now.

Lastly, it is recommended that the original language describing the exclusion of “...pavement resurfacing, repaving and road pavement structural section rehabilitation, within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed” (current permit Provision C.3.c.i.3) continue to be used in the new permit. This language is more inclusive than the proposed permit’s language, and continuing the flexibility allowed by the existing permit is essential to being able to maintain existing roads without the additional expense of retrofitting storm water treatment controls.

3. Minimize the Amount of Reporting and Recordkeeping

What the Draft Permit Proposes. The draft permit contains Attachment L “Annual Report Form” for San Francisco Bay Region Municipal Regional Storm water NPDES Permit (Report Form). This Report Form is 110 pages in length, and, in addition to this Report Form, there are supplemental reporting tables to summarize business, construction site, and pump station inspections. The Report Form is highly prescriptive, and the amount of reporting and recordkeeping would require a significant amount of staff resources that provides little benefit to protecting water quality. In addition, the Report Form is in many instances inconsistent with the Tentative Order reporting provisions and often requires more information than what is required to be reported for a specific provision.

Recommended solution

The reporting form should be developed following the adoption of the permit so that it reflects what has been included in the permit as adopted. The inclusion of the form with the permit also sends the wrong message to municipalities and stakeholders that the contents of the permit have already been decided, regardless of the comments submitted on the Tentative Order. If the Water Board is resolved to include a reporting form as part of the adopted permit, the reporting form needs to be pared down to about 10 to 20 pages of essential information. The completion of the proposed, lengthy Report Form would require a wasteful use of limited municipal staff resources on reporting and record keeping. One recommendation for making the reporting more manageable would be to have a different reporting form for each year of the permit with each annual report reporting form focused on just one area of the permit so that the entire permit is reported on once over a five-year period. Another recommendation would be to decrease the enormous amount of overly detailed information that is required in the reporting.

4. Simplify and Provide More Flexibility in Regulating Exempted and Conditionally Exempted Non-Storm water Discharges

What the Draft Permit Proposes. The draft permit’s Exempted and Conditionally Exempted Discharges section (Provision 15) would require Permittees to meet very detailed requirements on discharges of conditionally exempted discharges to storm drain systems and watercourses within their respective jurisdictions. These requirements would apply regardless of whether the discharge flows through the municipal separate storm

sewer system or whether the discharges are under the control of local municipalities. The draft permit would require that municipalities be responsible for every discharge of pumped groundwater, foundation drain, water from crawl space pumps, and footing drains meeting “water quality standards consistent with the existing effluent limitations in the Water Board’s NPDES General Permits...”(Provision C.15.b.i.(1)(c)). This would include the municipality being responsible for expensive water quality testing of suspended solids, total petroleum hydrocarbons, volatile organic compounds, and metals. Further, the municipalities would be required to “maintain records that these discharges, BMPs implemented, and any monitoring data collected demonstrate that the discharges meet the un-prohibited criteria” (Provision C.15.b.i.(2)).

The draft permit also includes detailed requirements for planned, unplanned, and emergency discharges of potable water (Provision C.15.b.iii). The proposed requirements include very prescriptive monitoring and reporting requirements. In some cases the potable water dischargers would be different agencies than the Permittees, but the requirements would be imposed on the Permittees. Some municipalities have their own local water utilities, but the rest will be reluctant to take on the oversight responsibility for large water utilities’ compliance with the overly prescriptive and expensive requirements proposed in the draft permit.

Recommended solution.

The draft permit’s proposed level of regulation represents overkill on managing minor types of non-storm water discharges that pose a limited threat to water quality. The fact sheet does not describe the basis for the proposed requirements. The Water Board adopted a reasonable way to regulate these minor types of non-storm water discharges in its amendment to SMCWPPP’s permit in July 2004. This 2004 permit amendment provides a simple list of BMPs that would need to be implemented to address minor non-storm water discharges. We recommend that this provision of the permit be totally rewritten and include a simplified table of BMPs similar to what was done in the 2004 permit amendment.

In addition, language should be added to the permit to provide municipalities flexibility to choose whether they want to take responsibility for ensuring water utilities comply with the requirements proposed for potable water discharges. For municipalities that choose not to assume responsibility for water utility discharges, the Water Board should adopt a General Permit for these types of discharges.

Need to Phase in Enhanced Pollution Controls That Would Increase Municipal Costs

The Water Board should recognize that municipalities need a way to fund significant, new, Permit requirements. This is particularly important given the current difficult financial times and lack of available funds that could be diverted from existing storm water tasks to new storm water tasks or from other existing municipal budget priorities to storm water. The Water Board should recognize that municipalities need an opportunity

to successfully achieve permit compliance by allowing an adequate phase in period for municipalities to attempt to secure additional sources of revenue.

The potential funding sources that do not require voter approval are limited and unlikely to provide a substantial fraction of the funds needed to implement the permit. It is likely that the proposed Permit provisions requiring significant additional expenditure would need voter approval, such as a bond fund to pay for capital projects and/or a tax or assessment to pay for long-term maintenance. For example, the Fact Sheet reports that the Los Angeles and City of Oakland trash capture device installations were funded in large part through voter-approved bond measures.

Municipalities need time to develop financial plans, educate property owners and/or voters on the need for additional funding, attempt to secure voter approval of bonds and/or additional taxes and assessments, and, if successful, start to collect sufficient funds to undertake the projects needed to comply with the permit. The permit's compliance dates should be adjusted to provide at least a five year period to attempt to secure and accrue the necessary revenue to meet significant new permit requirements.

We appreciate your consideration of our comments, and look forward to discussing these issues further at the March 11 public hearing. I can be reached at (650) 757-8888 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Donohue". The signature is fluid and cursive, with the first name "Brad" and last name "Donohue" clearly distinguishable.

Brad Donohue

Deputy Public Works Director

cc: Diane McGrath, City Manager
Roger Peters, City Attorney
Richard Mao, City Engineer